



STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

BARBARA A. CURRAN  
PRESIDENT

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

1100 RAYMOND BLVD.  
NEWARK, N.J. 07102  
201-648-2027

May 22, 1985

DOCKET FILE COPY ORIGINAL

W. Carey Edwards  
Counsel to the Governor  
Executive Department  
State House  
CN-001  
Trenton, NJ 08625

Re: Certification of Emergency Rule N.J.A.C. 14:18-2.9,  
Cable Television Pole Attachment Rental Methodology  
B.P.U. Docket No. CX8505533

Dear Carey:

An April 28, 1985 amendment to the FCC rule governing state authority over cable television pole attachments requires a state to certify to the FCC that its "rules and regulations" include a "specific methodology", for such regulation. 47 C.F.R. §1.1414(a)(3), 50 Fed. Reg. 18637, 18659 (May 2, 1985). The Board's methodology, while included in the January 21, 1985 certification accepted by the FCC, is in the form of a generic order<sup>1</sup>, and not in the form of a "rule or regulation."

In a letter received May 9, 1985 (attached) the FCC advised the Office of Cable Television that its previous filing must be supplemented by certifying a specific pole attachment methodology as an effective rule or regulation by May 30, 1985, to comply with the new FCC rule. The Board subsequently adopted the relevant portion of the generic order, without substantive change, as an emergency rule.

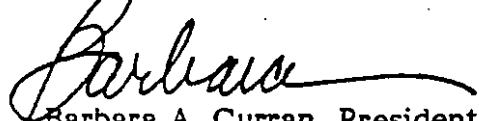
Failure to do so will cause the State's jurisdiction over cable television pole attachments rental rates to revert to the FCC. These rentals are significant as revenues to utilities and as a cost element to cable television companies, affecting customers of both.

<sup>1</sup>I/M/O the Office of Cable Television's Investigation into Practices and Operations of CATV Companies and Certain Utilities under the Provisions of Sections 20 and 21 of the Cable Television Act, Docket No. 769C-6206, Decision and Order, August 20, 1984.

May 22, 1985

Accordingly, the attached certification has been prepared for the Governor's review and signature in accordance with N.J.A.C. 1:30-4.4(a). Once certified, please return the certification to the BPU's the Office of Cable Television so it can be filed at the OAL prior to May 30, 1985.

Sincerely,

  
Barbara A. Curran, President  
Board of Public Utilities

BAC/CAR:mm

Enclosures: Certification of Emergency Rule  
FCC letter  
Board Adoption Order  
Emergency Rule and Concurrent Proposal

## STATEMENT OF IMMINENT PERIL

1. On May 9, 1985, the Board of Public Utilities, Office of Cable Television was advised by the Federal Communications Commission that a recent amendment to its rules, 47 C.F.R. §1.1414(a)(3), effective date, April 28, 1985, requires that a state's rules and regulations include a specific methodology for cable television pole attachment regulation. States which fail to certify such rules to the FCC by May 30, 1985 will lose their jurisdiction over cable television pole attachment matters.

Therefore, the FCC has requested that the Board of Public Utilities, Office of Cable Television supplement its January 21, 1985, certification with a statement that there are effective rules and regulations containing a specific methodology governing pole attachments. Compliance through normal rulemaking procedures cannot be attained in only 21 days.

On May 17, 1985, the Board found that the immediate need to conform the rules to the requirements of Federal regulation presented an imminent peril necessitating an emergency rulemaking. The text of the Adopted Emergency New Rule and Concurrent Proposal is annexed hereto.

2. The emergency rule, N.J.A.C. 14:18-2.9, provides such a methodology by setting forth the various elements which are to be used to calculate the appropriate rental cable television companies shall pay for attaching their plant to utility poles.

This methodology has been in effect since August 20, 1984, but not in the form of a rule or regulation. By adopting the Board's 1984 order in Docket No. 769C-6206 as a rule, the Board will be in technical compliance with the new FCC rule. Such compliance can then be certified to the FCC.

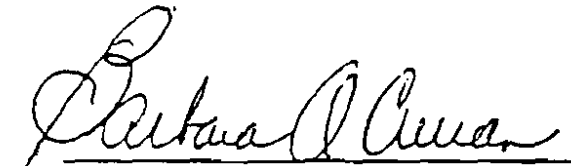
3. Emergency rule N.J.A.C. 14:18-2.9 shall expire 60 days from the date it is accepted for filing by the Office of Administration Law.

4. Affected parties have been mailed a certified copy of the Board's Order Adopting Emergency Rule, Docket No. CX8505533, dated May 17, 1985. Such parties include all parties to the Board's generic pole attachment proceeding, Docket No. 769C-6206, and all those who have requested advance notice of Office of Cable Television rulemakings pursuant to N.J.A.C. 1:30-3.1(a)(3).

All parties are already aware of the substance of the emergency rule through the Board's 1984 pole attachment Decision and Order in Docket No. 769C-6206.

5. I, Barbara A. Curran, President, Board of Public Utilities, State of New Jersey, hereby certify that the facts set forth herein are true and accurate to the best of my knowledge.

DATED: 5/23/85

  
Barbara A. Curran, President  
Board of Public Utilities

BOARD OF PUBLIC UTILITIES  
OFFICE OF CABLE TELEVISION

POLE ATTACHMENT RATE METHODOLOGY

ADOPTED EMERGENCY NEW RULE AND  
CONCURRENT PROPOSAL: N.J.A.C. 14:18-2.9

EMERGENCY NEW RULE ADOPTED: May /7 , 1985 by the Board of Public Utilities

Gubernatorial Approval (See N.J.S.A. 52:14B-4(c) :

1985.

EMERGENCY NEW RULE FILED: 1985, as

R. d.

Authority: N.J.S.A. 48:5A-10, 20(b), 21.

EMERGENCY NEW RULE EFFECTIVE DATE:

EMERGENCY NEW RULE EXPIRATION DATE:

The Concurrent Proposal is Known as  
PRN 1985 -

Submit comments by , 1985 to:

Bernard R. Morris, Director  
Office of Cable Television  
Board of Public Utilities  
1100 Raymond Boulevard  
Newark, New Jersey 07102  
Telephone: (201) 648-2670

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency new rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### SUMMARY

The Board of Public Utilities, Office of Cable Television is mandated by Federal regulation to certify to the Federal Communications Commission that its rules and regulations include a specific methodology for regulation of cable television attachments to utility poles which has been made publicly available in the state. 47 C.F.R. 1.1414(a)(3). (Effective date, April 28, 1985)

On May 9, 1985, the FCC informed the Office of Cable Television that such certification must be made by May 30, 1985. Although the Board established a publicly available methodology in its generic Decision and Order, dated August 20, 1984, In the Matter of the Office of Cable Television's Investigation into the Practices and Operations of CATV Companies and Certain Utilities Under the Provisions of Sections 20 and 21 of the Cable Television Act, Docket No. 769C-6206, it has not been promulgated as a "rule or regulation." Said order was adopted after lengthy hearings in a proceeding which extended over nearly eight years. To ensure that the state is in compliance with federal law, the method of calculating pole rental rates for cable television attachments has been formulated as a rule without any substantive change to the original order.

#### Social Impact

By adopting the Board's existing cable television pole attachment rate methodology, this rule assures that the Board's rules are in conformity with FCC requirements and will enable the Board to exercise its pole attachment jurisdiction without challenges to its certification to the FCC that there are "effective rules and regulations" governing pole attachment methodology.

Decertification would place all questions of pole rental rates in the hands of the FCC rather than state regulators familiar with local pole plant and sensitive to the impact on cable and utility rate payers.

#### Economic Impact

Because this rule corresponds to the Board's existing generic Decision and Order, it will have no additional economic impact upon adoption.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

# 14:18-2.9. Calculation of Pole Attachment Rent.

(a) In cases where the Board must determine the appropriate rental rate for cable television attachments on utility poles, it shall be calculated in the following manner:

(1) Total Percentage of Gross Plant as Annual Cost shall be the sum of the following percentages:

- (i) Rate of Return
- (ii) Depreciation Expense
- (iii) Miscellaneous Taxes
- (iv) Maintenance Expenses
- (v) Administrative Expenses
- (vi) Federal Income Tax

(2) Total Yearly Ownership Expense =  $\frac{\text{Unweighted Average Original Installed per Pole Cost}}{\text{Total Percentage Gross Pole Plant as Annual Cost}}$  Multiplied by

(3) Common Space = Setting Depth plus Ground Clearance

(4) Usable Space = Total Pole Length minus Common Space

(5) Footage of Usable Space Allocated to CATV = 1.0 Feet

(6) Footage of Common Space Allocated to CATV =  $\frac{1.0 \text{ Feet}}{\text{Total Usable Space on Pole}}$  Multiplied by Total Common on Pole

(7) Percentage of Total Space Allocated to CATV =  $\frac{\text{Footage of CATV Common Space} + \text{Footage of CATV Usable Space}}{\text{Total Pole Length}}$

(8) Annual Rental Charge Per Pole = Percentage Space Allocated to CATV Multiplied by Total Yearly Ownership Expense

(b) Weighted average original installed per pole cost may be used in Subsection (a) (2) above, upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree on weighted or unweighted costs, the Board shall employ the unweighted average original installed per pole cost.

(c) The ratio of total common space on the pole to the number of parties on the pole may be used to set the footage of common space allocated to cable television upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree to allocate common space equally, the Board shall employ the formula set forth in subsection (a) (6).

(d) Any terms not defined by subsection (a) shall be interpreted in a manner consistent with established Board policies and orders.

(e) The Office of Cable Television shall designate those uniform utility account numbers which are the appropriate sources of data.



State of New Jersey  
BOARD OF PUBLIC UTILITIES  
1100 RAYMOND BLVD.  
NEWARK, NEW JERSEY 07102

## CABLE TELEVISION

IN THE MATTER OF RULES AND )  
REGULATIONS OF THE OFFICE OF )  
CABLE TELEVISION GOVERNING POLE )  
ATTACHMENTS )

ORDER ADOPTING  
EMERGENCY RULE

DOCKET NO. CX8505533

(SERVICE LISTS ATTACHED)

## BY THE BOARD:

On August 20, 1984, the Board issued its generic Decision and Order in its pole attachment proceeding, <sup>1/</sup> in which the Board adopted a methodology for determining rates for cable television attachments to utility poles.

On May 9, 1985, the Office of Cable Television ("Office") was advised by the Federal Communications Commission ("FCC") that a recent amendment to its rules, 47 C.F.R. § 1.1414(a)(3) effective date, April 28, 1985 requires that a state's rules and regulations include a specific methodology for pole attachment regulation <sup>2/</sup>. States which fail to certify such rules to the FCC by May 30, 1985 can lose their jurisdiction over pole attachment matters.

In accordance with N.J.S.A. 48:5A-10, the Office of Cable Television has recommended that the method for calculating pole attachment rental rates contained in the Board's Decision and Order of August 20, 1984, be formally adopted as a rule. Said order is the product of extensive hearings and proceedings over a period of several years.

The Board, having considered the foregoing, HEREBY FINDS that a 21-day period is not sufficient time in which to conform through normal rulemaking procedures to the requirements of federal regulation 47 C.F.R. § 1.1414(a)(3), as amended, and that failure to comply presents an imminent peril of harm to ratepayers that would result from the State's loss of jurisdiction over pole attachments.

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1/ In the Matter of the Office of Cable Television's Investigation into Practices and Operations of CATV Companies and Certain Utilities under the Provisions of Sections 20 and 21 of the Cable Television Act. Docket No. 769C-6206.

2/ Report and Order. MM Docket No. 84-1296, FCC 85-179, 50 Fed. Reg. 18637, May 2, 1985.

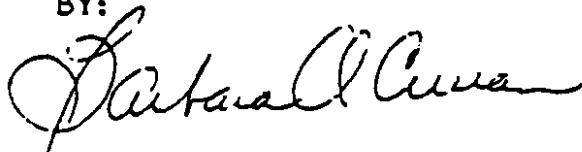


I. PROPOSED RULE (To be Completed by OAL)				
(a) Submitting Agency or Officer		(b) Date Submitted	(c) Subject of Proposed Rule	
(d) Type of Rule	(e) Form of Submission	(f) Section (s) of Code Affected	(g) Register Citation for Proposal	(h) Date of Publication
1. <input type="checkbox"/> New Rule	<input type="checkbox"/> Full Text	1. <input type="checkbox"/> Title	(i) This to certify that the notice of proposed rule was accepted and published in the New Jersey Register, pursuant to N.J.S.A. 52:14B-4(a) (1).	
2. <input type="checkbox"/> Amendment		2. <input type="checkbox"/> Subtitle		
3. <input type="checkbox"/> Repeal		3. <input type="checkbox"/> Chapter		
4. <input type="checkbox"/> Rescission	<input type="checkbox"/> Synopsis	4. <input type="checkbox"/> Subchapter		
5. <input type="checkbox"/> Suspension		5. <input type="checkbox"/> Section		
		6. <input type="checkbox"/> Catchline N.J.A.C.		
			Rules Analyst	Date
II. RULEMAKING RECORD AND ADOPTION OF PROPOSED RULE (To be Completed by Agency)				
(a) Public Notice for Proposal		(b) Public Comment Permitted		(c) Special Procedure Initiated Pursuant to the APA or Otherwise Required by Law
1. <input type="checkbox"/> N.J. Register		1. <input type="checkbox"/> Written Statement		1. <input type="checkbox"/> Pre-Proposal for a Rule
2. <input type="checkbox"/> General Newspaper (Specify)		2. <input type="checkbox"/> Phone Conversation		2. <input type="checkbox"/> Petition for a Rule
3. <input type="checkbox"/> Trade Journal (Specify)		3. <input type="checkbox"/> Public Hearing		3. <input type="checkbox"/> Public Hearing:
4. <input type="checkbox"/> Distribution List		4. <input type="checkbox"/> Personal Interview		<input type="checkbox"/> i. Pursuant to N.J.A.C. 52:14B-4(a) 3
5. <input type="checkbox"/> Law Journal		5. <input type="checkbox"/> Conference		<input type="checkbox"/> ii. Mandated by
6. <input type="checkbox"/> Other (Specify)		6. <input type="checkbox"/> Other		<input type="checkbox"/> iii. Discretionary
(d) Public Hearing (Where Applicable)				
1. Date (s)		2. Place		3. No. of Persons
(e) Record of Public Comment		(f) Variance between Proposal and Adoption		4. <input type="checkbox"/> Submission to Advisory Board
1. <input type="checkbox"/> File of Written Statements		1. <input type="checkbox"/> No Change		<input type="checkbox"/> i. Mandated by
2. <input type="checkbox"/> Transcript of Public Hearing		2. <input type="checkbox"/> With Changes Not in Violation of N.J.A.C. 1:30-3.5		5. <input type="checkbox"/> Special Notice
3. <input type="checkbox"/> Public Hearing Officer's Report		Attach Explanatory Material for Any Change		<input type="checkbox"/> i. Mandated by
4. <input type="checkbox"/> List of Individuals or Associations				6. <input type="checkbox"/> Special Effective Date
5. <input type="checkbox"/> Minutes of Conference or Other Meeting		(h) Type of Adoption		<input type="checkbox"/> i. Mandated by
6. <input type="checkbox"/> No Comment Received				7. <input type="checkbox"/> Other (Specify)
Attach Summary of Any Comments Received and of Agency Response				<input type="checkbox"/> i. Mandated by
2) Executive Order No. 66 (1978)		1. <input type="checkbox"/> Ordinary Rule		Attach Material Which Explains and Verifies Any Special Procedure
1. <input type="checkbox"/> Expiration Date		2. <input type="checkbox"/> Emergency Rule		
<input type="checkbox"/> i. Established by this Rule		3. <input type="checkbox"/> Organizational Rule		
<input type="checkbox"/> ii. Already Established As Part of N.J.A.C.		4. <input type="checkbox"/> Federally Required Rule		
		5. <input type="checkbox"/> Readoption		
3. <input type="checkbox"/> Exempt Under		Attach the Statement of Imminent Peril and Expiration Date for Any Emergency Rule		(k) Official File Stamp
(i) Operative Date:				
1. <input type="checkbox"/> Upon Promulgation				
<input type="checkbox"/> After Promulgation				
<input type="checkbox"/> Upon Filing (for Emergency and Readopted Rules Only)				
(j) Adoption Pursuant to authority of N.J.S.A. and in accordance with the New Jersey APA and any applicable provisions of state or Federal statutes or Federal regulations, the (Agency)				
I hereby accept this rule and certify the rulemaking record contained in and attached to this Certificate.				
ORDERED this 20th day of May 1985.				
Bernard R. Thomas, Director, OCTV				
Signature and Title of Adopting Officer				
III. PROMULGATION (To be Completed by OAL)				
1. Code Citation Assigned				
2. Document Number Assigned				
(c) Register Citation for Promulgation of Notice of Adoption				
3. Date of Promulgation				

Upon full consideration of this matter, the Board ORDERS that the proposed new rule N.J.A.C. 14:18-2.9, be ADOPTED on a 60-day emergency basis, and FURTHER ORDERS that it be submitted to the Governor for certification and filing with the Office of Administrative Law as an Emergency Rule Adoption and Concurrent Rule Proposal pursuant to N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.4.


DATED: May 17, 1985

BOARD OF PUBLIC UTILITIES  
BY:

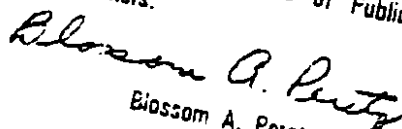
  
BARBARA A. CURRAN  
PRESIDENT

ATTEST:

  
GEORGE H. BARBOUR  
COMMISSIONER

  
BLOSSOM A. PERETZ  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utility Commissioners.

  
Blossom A. Peretz  
Secretary

## SERVICE LIST

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Newark NJ 07102

OCTV 3/11/85

SERVICE LIST

EXISTING INTERESTED PARTIES  
ORDER N.J.A.C. 1:27-3.1(a)(1)

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Gateway 1  
Newark, New Jersey 07102

Ms. Helen Naimark, President  
Cable Users Association of N. J.  
24 Beechwood Road  
Summit, New Jersey 07801

Mr. Charles Nase  
Maple Shade Cable Co., Inc.  
80 West Main Street  
Maple Shade, NJ 08052

Mr. Bill Dressel, Assistant Director  
New Jersey League of Municipalities  
407 West State Street  
Trenton, New Jersey 08610

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

May 3, 1985

1985 MAY -9 AM 11:55

IN REPLY REFER TO:

NEW JERSEY BOARD OF PUBLIC UTILITIES

New Jersey Board of Public Utilities  
1100 Raymond Boulevard  
Newark, New Jersey 07102  
Attn: Bernard R. Morris, Director

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state) . . . .

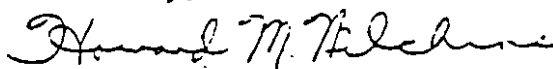
With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission  
Attention: Margaret Wood, Esq.  
Room 6206  
1919 M Street, N.W.  
Washington, D.C. 20554  
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins  
Deputy Chief, Enforcement Division

Enclosure

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations was amended to read as follows:

A. Part 1 - Practice and Procedure.

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§1.1414 State certification.

(a) If the Commission does not receive certification from a state that:

- (1) It regulates rates, terms and conditions for pole attachments;
- (2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,
- (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

\* \* \* \* \*

(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

- (1) within 180 days after the complaint is filed with the state, or
- (2) within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.